

AMENDED IN SENATE APRIL 18, 2002

SENATE BILL

No. 1519

Introduced by Senator Bowen

February 20, 2002

An act to ~~add Section 80111 to the Water~~ amend Section 394 of, and to add Section 365.2 to, the *Public Utilities Code*, relating to electric power.

LEGISLATIVE COUNSEL'S DIGEST

SB 1519, as amended, Bowen. Department of Water Resources: power.

(1) Existing law authorizes the Department of Water Resources to enter into contracts for the purchase of electric power, to sell power to retail end use customers and, with certain exceptions, to local publicly owned electric utilities at not more than the department's acquisition costs. Existing law provides that the department retains title to all power sold by it to the retail end use customers. *Existing law directs the Public Utilities Commission to suspend direct transactions between electricity suppliers and end use customers of certain privately owned electrical corporations, until the department no longer supplies electrical power.*

This bill would require the Public Utilities Commission, if it determines there is a shifting of recoverable costs, as specified, from customers who take service from an alternate provider to the customers of an electrical corporation, to recover those costs from each customer class in proportion to the load of each class that is served by alternate providers. The bill would declare this requirement to be consistent with the requirements of specified provisions of existing law, and therefore, declaratory of existing law.

This bill would require the commission to establish a mechanism to allow customers of an electrical corporation for whom direct transactions have been suspended, to elect to purchase renewable power, as defined, from an alternate provider, as defined. The bill would prohibit implementation of the election to purchase renewable power until the commission develops a cost-recovery mechanism, as specified, that is applicable to customers that elected to purchase electricity from an alternate provider between February 1, 2001 and the effective date of this act. The bill would authorize the commission to require an electrical corporation to offer renewable power service to its customers. The bill would require a customer that elects to purchase renewable power from an alternate provider to reimburse the department for specified costs. The bill would authorize the department and the commission to impose a charge, in certain circumstances, upon a customer if the customer returns to receiving electricity from the department or the electrical corporation. After the passage of a specified period of time, existing law suspends the right of retail end use customers to acquire service from other providers until the department no longer supplies power under these provisions.

~~This bill would authorize a retail end use customer who purchases power from an electrical corporation to acquire renewable power service, as defined, from an alternate provider if the customer purchases and continues to receive electrical power with a minimum renewable power content of 80% or greater. The bill would require a customer who elects renewable power service from an alternate provider to pay the department's net unavoidable costs of power procurement attributable to that customer's purchases from the department that are uncollected. The bill would authorize the department, in certain circumstances, to impose a fee if a nonresidential retail end use customer previously served by an alternate provider acquires service from an electrical corporation. This fee charge would be the obligation of the alternate provider where customers are involuntarily returned to receiving electricity from the department or the electrical corporation service and alternate providers that are registered with. The bill would require each provider, as a condition of registration with the Public Utilities Commission commission as an electric service providers, would be required provider, to post adequate bonds or purchase insurance to cover a bond or demonstrate insurance sufficient to the fee charge. The bill would provide that the right of a retail end use customer who has not purchased power from an electrical corporation, as defined, on or after~~

January 17, 2001, to purchase power from an alternate provider, as defined, may not be limited by the bill. The bill would require the commission to require each customer of an electrical corporation to be notified of the conditions for purchasing power from an alternate provider within 90 days of the effective date of these provisions. Because a violation of an order of the commission is a crime under existing provisions of law, the bill would impose a state-mandated local program by expanding the definition of a crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature, in enacting the
2 act adding this section, to establish a policy to govern the
3 circumstances under which retail end use customers may choose
4 to acquire service from energy providers other than the
5 Department of Water Resources. The goal of that policy is to
6 provide retail end use customers the greatest possible flexibility in
7 procuring power while preventing any negative consequences for
8 those customers who continue to be served by the Department of
9 Water Resources. It is further the intent of the Legislature to
10 recognize the genuine contributions of new and renewable sources
11 of electrical generation to affordable, clean, reliable, and
12 sustainable electricity service for all California residents.

13 ~~SEC. 2. Section 80111 is added to the Water Code, to read:~~

14 SEC. 2. Section 365.2 is added to the Public Utilities Code, to
15 read:

16 365.2. (a) As used in this section, the following terms have
17 the following meanings:

18 (1) "Alternate provider" means an entity, other than an
19 electrical corporation, supplying electricity to a retail end use
20 customer within the service territory of an electrical corporation
21 as the territory existed on February 1, 2001.

1 (2) “Department” means the Department of Water Resources.

2 (3) “Electrical corporation” means an electrical corporation,
3 as defined in Section 218, serving the retail end use customers for
4 which the department is procuring power pursuant to Division 27
5 (commencing with Section 80000) of the Water Code.

6 (4) “Renewable power” means electricity produced from
7 geothermal, wind, solar, biomass, or landfill gas sources.

8 (b) (1) It is the intent of the Legislature, that each retail end use
9 customer that has purchased power from an electrical corporation
10 on or after February 1, 2001, regardless of whether the customer
11 thereafter takes service from an alternate provider, bear a pro rata
12 share of the department’s power purchase costs, as well as power
13 purchase contract obligations incurred as of the effective date of
14 this act, that are recoverable from electrical corporation
15 customers in commission-approved rates. It is the further intent of
16 the Legislature to prevent any shifting of recoverable costs from
17 customers who take service from an alternate provider to electrical
18 corporation customers.

19 (2) To the extent that any shifting of recoverable costs would
20 occur, in the determination of the commission, those costs shall be
21 recovered from each customer class in proportion to the load of
22 each class that is served by alternate providers.

23 (3) The Legislature finds that this subdivision is consistent with
24 the requirements of Chapter 4 of the Statutes of 2001, First
25 Extraordinary Session, and is therefore declaratory of existing
26 law.

27 (c) The commission shall establish a mechanism to allow
28 electrical corporation retail end use customers, upon their
29 election, to purchase renewable power. To accomplish this, the
30 commission may require an electrical corporation to offer
31 renewable power to its retail end use customers.

32 (d) (1) Notwithstanding Section 80110 of the Water Code, a
33 retail end use customer purchasing power from an electrical
34 corporation, may elect to purchase renewable power from an
35 alternate provider, upon payment of the costs described in
36 subdivision (e), and pursuant to the terms and conditions as may
37 necessarily be imposed by the commission, consistent with this
38 section.

39 (2) This subdivision shall not become operative until the
40 commission develops a cost-recovery mechanism, consistent with

subdivision (b), that is applicable to customers that elected to purchase electricity from an alternate provider between February 1, 2001 and the effective date of this act adding this section.

(3) Prior to implementing this subdivision, the commission shall submit a report certifying its satisfaction of paragraph (2) to the Senate Energy, Utilities and Communications Committee, or its successor, and the Assembly Committee on Utilities and Commerce, or its successor.

(e) A retail end use customer that elects to purchase electricity from an alternate provider shall reimburse the department for all of the following:

(1) The department's unrecovered actual cost of power procurement, including any financing and administrative costs, attributable to that customer, as determined by the department. The department's actual cost shall be calculated as the difference, if any, between the department's total actual procurement costs attributable to a customer and the revenues collected by the department from the customer during the customer's term of service with the department. The department shall publish, and update as necessary, a formula for calculation of unrecovered costs that are due pursuant to this subdivision.

(2) Any additional costs of the department, equal to the customer's proportionate share of the department's estimated net unavoidable power purchase contract costs, for the period commencing with the customer's purchases of electricity from an alternate provider, through the expiration of all then existing power purchase contracts entered into by the department. The proportionate share and unavoidable costs are to be determined by the department.

(f) If a nonresidential retail end use customer previously served by an alternate provider thereafter purchases electricity from an electrical corporation, the department and the commission may impose a charge equivalent to any unavoidable costs imposed on the electricity portfolio of the department or an electrical corporation, attributable to the load of that customer, if the charge is necessary to avoid imposing costs on other customers of the electrical corporation, or on the state. If a customer is involuntarily returned to electricity service from an electrical corporation by an alternate provider, any such charge shall be the obligation of the alternate provider. As a condition of its

1 registration pursuant to Section 394 of the Public Utilities Code,
2 an alternate provider shall post a bond or demonstrate insurance
3 sufficient to cover such a charge.

4 (g) Within 90 days of the effective date of the act adding this
5 section, the commission shall require each electrical corporation
6 retail end use customer to be notified of conditions for purchasing
7 power from an alternate provider pursuant to this section.

8 SEC. 3. Section 394 of the Public Utilities Code is amended
9 to read:

10 394. (a) As used in this section, “electric service provider”
11 means an entity that offers electrical service to ~~residential and~~
12 ~~small commercial~~ customers *within the service territory of an*
13 *electrical corporation*, but does not include an electrical
14 corporation, as defined in Section 218, or a public agency that
15 offers electrical service to residential and small commercial
16 customers within its jurisdiction, or within the service territory of
17 a local publicly owned electric utility. “Electric service provider”
18 includes the unregulated affiliates and subsidiaries of an electrical
19 corporation, as defined in Section 218.

20 (b) Each electric service provider shall register with the
21 commission. As a precondition to registration, the electric service
22 provider shall provide, under oath, declaration, or affidavit, all of
23 the following information to the commission:

24 (1) Legal name and any other names under which the electric
25 service provider is doing business in California.

26 (2) Current telephone number.

27 (3) Current address.

28 (4) Agent for service of process.

29 (5) State and date of incorporation, if any.

30 (6) Number for a customer contact representative, or other
31 personnel for receiving customer inquiries.

32 (7) Brief description of the nature of the service being
33 provided.

34 (8) Disclosure of any civil, criminal, or regulatory sanctions or
35 penalties imposed within the 10 years immediately prior to
36 registration, against the company or any owner, partner, officer, or
37 director of the company pursuant to any state or federal consumer
38 protection law or regulation, and of any felony convictions of any
39 kind against the company or any owner, partner, officer, or director
40 of the company. In addition, each electric service provider shall

1 furnish the commission with fingerprints for those owners,
2 partners, officers, and managers of the electric service provider
3 specified by any commission decision applicable to all electric
4 service providers. The commission shall submit completed
5 fingerprint cards to the Department of Justice. Those fingerprints
6 shall be available for use by the Department of Justice and the
7 Department of Justice may transmit the fingerprints to the Federal
8 Bureau of Investigation for a national criminal history record
9 check. The commission may use information obtained from a
10 national criminal history record check conducted pursuant to this
11 section to determine an electric service provider's eligibility for
12 registration.

13 (9) Proof of financial viability. The commission shall develop
14 uniform standards for determining financial viability and shall
15 publish those standards for public comment no later than March
16 31, 1998. In determining the financial viability of the electric
17 service provider, the commission shall take into account the
18 number of customers the potential registrant expects to serve, the
19 number of kilowatthours of electricity it expects to provide, and
20 any other appropriate criteria to ensure that ~~residential and small~~
21 ~~commercial~~ customers have adequate recourse in the event of
22 fraud or nonperformance.

23 (10) Proof of technical and operational ability. The
24 commission shall develop uniform standards for determining
25 technical and operational capacity and shall publish those
26 standards for public comment no later than March 31, 1998.

27 (c) Any registration filing approved by the commission prior to
28 the effective date of this section which does not comply in all
29 respects with the requirements of subdivision (a) of Section 394
30 shall nevertheless continue in force and effect so long as within 90
31 days of the effective date of this section the electric service
32 provider undertakes to supplement its registration filing to the
33 satisfaction of the commission. Any registration that is not
34 supplemented by the required information within the time set forth
35 in this subdivision shall be suspended by the commission and shall
36 not be reinstated until the commission has found the registration
37 to be in full compliance with subdivision (a) of Section 394.

38 (d) Any public agency offering aggregation services as
39 provided for in Section 366 solely to retail electric customers
40 within its jurisdiction that has registered with the commission

1 prior to the enactment of this section may voluntarily withdraw its
2 registration to the extent that it is exempted from registration under
3 this chapter.

4 (e) Before reentering the market, electric service providers
5 whose registration has been revoked shall file a formal application
6 with the commission that satisfies the requirements set forth in
7 Section 394.1 and demonstrates the fitness and ability of the
8 electric service provider to comply with all applicable rules of the
9 commission.

10 (f) Registration with the commission is an exercise of the
11 licensing function of the commission, and does not constitute
12 regulation of the rates or terms and conditions of service offered
13 by electric service providers. Nothing in this part authorizes the
14 commission to regulate the rates or terms and conditions of service
15 offered by electric service providers.

16 ~~80111. (a) As used in this section, the following terms have~~
17 ~~the following meanings:~~

18 ~~(1) “Electrical corporation” means an electrical corporation,~~
19 ~~as defined in Section 218 of the Public Utilities Code, serving the~~
20 ~~customers for which the department is procuring power pursuant~~
21 ~~to this division.~~

22 ~~(2) “Alternate provider” means an entity, other than an~~
23 ~~electrical corporation, supplying electrical power within the~~
24 ~~service territory of an electrical corporation as the territory existed~~
25 ~~on January 17, 2001.~~

26 ~~(3) “Renewable power” means electrical power produced~~
27 ~~from geothermal, wind, solar, biomass, or landfill gas sources.~~

28 ~~(b) The right of a retail end use customer who has not purchased~~
29 ~~power from an electrical corporation on or after January 17, 2001,~~
30 ~~to purchase power from an alternate provider may not be limited~~
31 ~~by this section.~~

32 ~~(c) Notwithstanding Section 80110 and subject to subdivision~~
33 ~~(d), a retail end use customer who purchases power from an~~
34 ~~electrical corporation may acquire renewable power service from~~
35 ~~an alternate provider if the customer purchases and continues to~~
36 ~~receive electrical power with a minimum renewable energy~~
37 ~~content of 80 percent or greater.~~

38 ~~(d) A customer who elects renewable power service from an~~
39 ~~alternate provider pursuant to subdivision (c) shall pay to the~~
40 ~~department any uncollected amounts equivalent to the~~

~~department's net unavoidable cost of power procurement, including any financing costs, attributable to that customer's purchases from the department, as determined by the department. The department's net unavoidable cost shall be calculated as the difference, if any, between the department's total actual procurement costs and the rates collected by the department from the customer during the term of service with the department. Any amounts due pursuant to this section for the purchase of power may be payable in installments over a term coincident with the term of bonds issued to finance the purchase of the power. If the customer submits a request to the department for an estimate of the amount due, the department shall provide the estimate to the customer within 30 days of the request.~~

~~(e) If a nonresidential retail end-use customer previously served by an alternate provider acquires service from an electrical corporation, the department may impose a fee equivalent to any unavoidable costs imposed on the department's portfolio attributable to the load of that customer, if the fee is necessary to avoid imposing costs on other customers of the electrical corporation, or on the state. In the case of a customer who is involuntarily returned to electrical corporation service by an alternate provider, any such fee shall be the obligation of the alternate provider. As a condition of its registration pursuant to Section 394 of the Public Utilities Code, an alternate provider that is registered as an electric service provider shall post a bond or demonstrate insurance sufficient to cover such a fee.~~

~~(f) Within 90 days of the effective date of this section, the commission shall require each electrical corporation customer to be notified of conditions for purchasing power from an alternate provider imposed by this section.~~

~~SEC. 3.~~

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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